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In the Supreme Court of the United States

OCTOBER TERM, 1958

PETER CHAUNT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 593

PETER CHAUNT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (X R. 3-9;[1] Pet. App. 5a-13a) is reported at 270 F. 2d 179. The findings and judgment of the district court are set forth at III R. 561-573.

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[1] The record filed in this Court consists of ten numbered volumes and numerous packaged exhibits. Volumes I-III (pp. 1-579) contain the pre-trial papers (pleadings, requests for interrogatories, depositions, etc.), as well as the findings of the district court; volume IV duplicates some of the material found in the first three volumes; volumes V-VIII (pp. 5-549) are the transcript of the trial; volume IX is an index to the record; volume X contains the proceedings in the court of appeals.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 1959 (X R. 10; Pet. App. 4a-5a). The petition for a writ of certiorari was filed on December 16, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner may raise in this Court for the first time his contention that the complaint, in an action for denaturalization, may not include an additional ground to that alleged in the affidavit of good cause.

2. Whether, in any event, that contention is correct.

3. Whether petitioner's concealment and misrepresentation of past arrests was material.

4. Whether, in any event, there was clear and convincing evidence that petitioner concealed and misrepresented his Communist Party membership, the ground set forth in the affidavit of good cause.

STATUTES INVOLVED

Section 340(a) of the Immigration and Nationality Act of 1952, 66 Stat. 260, as amended, 68 Stat. 1232, 8 U.S.C. 1451, provides in pertinent part:

> It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking

and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation * * *.

STATEMENT

Petitioner, a native of Hungary, entered this country in 1921, and was admitted to United States citizenship by a decree entered by the United States District Court for the Eastern District of New York on November 28, 1940 (X R. 3). On April 21, 1955, the government filed a second amended complaint in the District Court for the Southern District of California pursuant to Section 340(a) of the Immigration and Nationality Act of 1952 (*supra*), praying that the decree of naturalization be set aside on the ground that petitioner had procured citizenship by concealment of material facts and by willful misrepresentations (I R. 180-188). The complaint charged that, in the proceedings which led to his naturalization, petitioner (1) intentionally concealed and falsely represented that he was not a member of the Communist Party, whereas he had been an active member and officer of the Party since 1926, and (2) that he intentionally concealed and falsely represented that prior to his naturalization he had never been arrested or charged with a violation of any law of the United States or state or any city ordinance or traffic regulation, whereas he had, in fact, been so arrested and charged (I R. 180-188).

Attached to the complaint was a sworn affidavit (see Pet. App. 1a-4a) prepared by an attorney of the Immi-

gration and Naturalization Service, who stated that, from his examination of the records of the Service, it appeared that in the prenaturalization proceedings petitioner had alleged under oath "[t]hat he had never belonged to any Communist, Nazi or Fascist organization, and that the only organization to which he had ever belonged was the fraternal benefit society of International Workers Order"—allegations which were false, in that petitioner had been an active member and officer of the Communist Party since 1926 (I R. 189). The affidavit did not refer to the charge of concealing and misrepresenting arrests.

The evidence at the denaturalization trial included the following:

1. Government witness Calvin W. Derenger, who had acted as preliminary examiner at the time the petition for naturalization was filed, testified on the basis of normal practice and his notations[2] that he had asked petitioner whether he believed in Nazism, Communism, or Fascism, and that petitioner, who was then under oath, responded in the negative (V R. 17-23). Similarly, based upon normal practice and his notations on the preliminary forms, Derenger further testified that he had orally asked petitioner where he

[2] Derenger had no independent recollection of petitioner, or of the specific questions he had asked him (V R. 16, 29-30). His testimony was therefore based on the established procedure in conducting preliminary examinations, his own custom and practice, and notations, markings, and remarks which he had placed on petitioner's application forms during the examination (see, *e.g.*, Govt. Exs. 2f and 2g, reproduced at II R. 292). These documents, the truthfulness and genuineness of which had been stipulated to by counsel before trial (V R. 11), were introduced into evidence by the government (V R. 112).

worked and to name all the organizations to which he belonged; in response, petitioner named only the Fraternal Benefit Society of International Workers Order (V R. 32-35).[3]

Petitioner answered "No" when explicitly asked in question 30 of the Preliminary Form, "Have you ever been arrested or charged with violation of any law of the United States or state or any city ordinance or any traffic regulation" (Govt. Ex. 2b). Derenger testified that he checked petitioner's answer by oral repetition of the form question in accord with his established practice to go thoroughly into the applicant's arrests and to "make sure [applicants] gave a complete answer" (V R. 40-41; see also V R. 59-63, 66-67). The witness further stated that, under normal practice, if any arrests had been disclosed, the matter would have been further investigated (V R. 65-66).

2. During the years 1929-1930, petitioner had been arrested on several occasions in New Haven, Connecticut, on charges of having violated local ordinances. The records of these arrests were uncontested and were admitted into evidence (Govt. Exs. 1A-1B; see II R. 424-426; VII R. 484; X R. 4).

On July 30, 1929, he was arrested for distributing hand-bills against the peace of the state. He pleaded not guilty and was discharged. On December 21, 1929,

[3] The "Results of Examination" (Govt. Ex. 2g), which were endorsed on the back of the triplicate copy of Chaumts' Petition For Naturalization, contained the following remarks of the examiner placed there as petitioner's response to the above question:

> Organization-Fraternal Benefit Society of International Workers Order where applicant is employed—no others C.D. [Calvin Derenger]

petitioner was arrested for making a public demonstration. He pleaded not guilty but it is unclear as to the court's disposition of the case.[4] And on March 16, 1930, petitioner was arrested for committing a breach of the peace. He pleaded not guilty but was found guilty and fined $25. On appeal, the case was "nolled".

3. Uncontradicted testimony and real evidence of petitioner's Communist Party activities may be summarized as follows:

(a). Government witness John Lautner testified that he (Lautner) joined the Communist Party in 1929 and that he retained his membership until January 17, 1950 (VI R. 287, 291). Following a course of study at the international training school of the Communist Party, he held various official positions in committees and commissions of the Party in Detroit, Michigan (1930-1931), Canada (1931-1932), Cleveland, Ohio (1932), and New York City (1933-1936). From 1936 to 1940 he was district organizer of the Communist Party in West Virginia; in 1947, some time after his discharge from the Army, he was appointed to head the Party's New York State Discipline Commission; and, in 1948, he was also named as a member of the National Review Commission (VI R. 289-291).

Lautner testified that he first met petitioner in 1931 at Hamilton, Ontario, at a Communist Party training school, where petitioner came to teach a course in the basic theories of Leninism (VI R. 291-296). At this time he knew petitioner to be the district organizer of the Communist Party in Buffalo, New York (VI R.

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[4] The record shows only, "Found J.S."—possibly meaning judgment suspended.

297-298).[5] The next time Lautner saw petitioner was at a National Convention of the Communist Party in either 1936 or 1938. Petitioner was there as head of the Missouri delegation of the Party (VI R. 298-301; VII R. 383). As Lautner put it, during the 1930's petitioner was well known in the party to the "[h]igh functionaries * * * and so-called old-timers" (VII R. 449-450).

Lautner thereafter met with petitioner in 1940 in New York City to discuss problems relating to a Communist Party training school of which petitioner was then an Assistant Director (VII R. 383-387). They met on several occasions up until 1942 in connection with the school's activities (VII R. 386-389). The last time Lautner saw petitioner was in Cleveland, Ohio, in the winter of 1945, at a Communist meeting. Petitioner attended as the district representative of the Ohio District of the Communist Party (VI R. 331-332, 335-336).

(b). Government witness Kenneth J. Kalke, a member of the Young Communist League from 1929 to 1931 (V R. 113), testified that he first met petitioner in Buffalo, New York, in the winter of 1930-1931, at a meeting held at the office of the Unemployed Council of that city. At this meeting petitioner introduced

[5] Lautner had also heard that petitioner had been district organizer of the Communist Party in Connecticut and that, sometime after he had left Buffalo, he had been district organizer in St. Louis, Missouri (VI R. 297-298; VII R. 411). According to Lautner, district organizers during the period 1930-1940 took their orders directly from the Central Committee of the Communist Party (VII R. 397-398). He further testified that this position required a thorough understanding of the ideology and philosophy of Marxism-Leninism, and the application of this philosophy in carrying out the day-to-day activities of the Party (VII R. 338-339).

himself by saying: "I am Comrade Chaunt. I am the new district organizer of the Communist Party" (V R. 115).[6] Thereafter, in March 1931 in Rochester, New York, Kalke heard petitioner, who was introduced as the district organizer of District 4, address a convention of the Young Communist League. In this speech petitioner pointed out the importance of that organization's work in training and recruiting personnel for the Communist Party (V R. 122-124). In April 1931, Kalke saw petitioner at a meeting of the district committees of the Young Communist League in Buffalo (V R. 124-125) and was assigned by petitioner, at this meeting, to go to Syracuse, New York, as a "colonizer" of the Young Communist League in that city (V R. 126-127, 129-130). During 1931, petitioner also directed Kalke to take part in certain "agitational" work in Buffalo and Niagara Falls (V R. 116-121, 131-132).

(c). Government witness George E. Duemler testified that during the period 1933-1935 he was in private law practice in St. Louis, Missouri, and a member of the Socialist Party. His legal work consisted of representing trade unions, and nationality and unemployed groups primarily Socialist in leadership (VI R. 209, 223-226). Duemler stated that sometime in June 1933 he had a conversation with petitioner at Communist Party headquarters in St. Louis. At this meeting petitioner, as on prior occasions, informed him that he was the district organizer for the Communist Party for the St. Louis district (VI R. 215).

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[6] The area covered by the Buffalo District in 1931 (District 4) included all of western and part of central and south central New York and a small portion of northwest Pennsylvania (V R. 133).

Duemler further testified that on July 3, 1933, he was chairman of a convention of the Continental Congress of Workers and Farmers in Columbia, Missouri, and that, while the convention was in session, petitioner marched down the center aisle at the head of a group of people demanding "that credentials be furnished to the Communist Party", and other organizations which he represented (VI R. 211, 214, 216-218); that on another occasion, in February 1934, petitioner was the Communist Party representative at a protest meeting against Austria (VI R. 218-219); and that he (Duemler) was convinced during this period (1933-1935) that petitioner was the "one person in complete authority so far as the Communist Party was concerned in that area" (VI R. 237).[7]

(d). Numerous items of real evidence were also introduced at trial to establish petitioner's activity and official status in the Communist Party. These included Communist Party membership books for 1928 (Govt. Ex. 4), 1930 (Govt. Ex. 5), 1931 (Govt. Exs. 6 and 7), signed by petitioner as district organizer (VI R. 192-197, 326), and numerous articles from the Daily Worker, describing petitioner's activities and official status in the Party (VII R. 406-416; Govt. Ex. 8-13).

4. When called by the government, petitioner invoked the privilege against self-incrimination as to all questions, except the one inquiring whether he was the

[7] Government witness Howard Rushmore, a Communist Party member until December 1939 (VI R. 247-248), testified that he had first met petitioner in St. Louis in the winter of 1934-1935 at Communist Party headquarters, and that petitioner had identified himself as the district organizer of the Communist Party of Missouri (VI R. 241-242; see also VI R. 243-247).

defendant in the action (VIII R. 532-538). He did not testify in his own behalf.

At the conclusion of the trial, the district court entered a judgment cancelling petitioner's naturalization. The court found that there was "clear and unequivocal and convincing evidence" establishing "beyond all reasonable doubt" that petitioner had, by fraudulent and wilful concealments and misrepresentations, "foreclosed investigation as to whether [he] had all of the qualifications for citizenship required," and had thus procured naturalization by concealment and misrepresentation of material matters, *i.e.*, arrests, active membership and official status in the Communist Party, and attachment and fidelity to the United States (III R. 561-573).

The court of appeals, finding that petitioner's concealed arrest record amply supported the judgment of the district court, unanimously affirmed, without passing upon the other findings of the district court (X R. 3-9).

ARGUMENT

The petition for a writ of certiorari challenges only the basis upon which the court of appeals affirmed the judgment—that petitioner concealed and misrepresented his arrest record. The petition suggests (Pet. 5, n. 3) that, if that determination was erroneous, this Court should reverse and remand to the court of appeals to consider the remaining grounds of the district court's decision.

Petitioner asserts that the failure of the affidavit of good cause to allege evidentiary matter as to conceal-

ment and misrepresentation of his arrest record (Pet. 8), and the lack of any evidence at trial that divulgence of these arrests during the proceedings leading up to his naturalization would have been material—that is, might have reasonably led to a denial of his application for citizenship (Pet. 9-10)—warrant reversal of the judgment below. These contentions do not go to the additional finding of the district court cancelling the certificate of citizenship on the ground that petitioner had concealed and misrepresented his Communist Party membership, a finding which the court of appeals deemed unnecessary to review. While we believe that the finding of Party membership, convincingly established by the evidence, is independently sufficient to support the cancellation order (see *infra*, pp. 17-19), in view of petitioner's request for a remand for review of that issue by the court of appeals, we will discuss first the basis on which the court of appeals affirmed the judgment and show that there is no occasion either for further review or for a remand of the case.

1. (*a*). Petitioner first contends (Pet. 8) that a denaturalization judgment may not be based on a ground included in the complaint but not in the affidavit of good cause. This contention, however, was not raised either in the trial court or the court of appeals.[8] It is

[8] It is significant to note that *United States* v. *Zucca*, 351 U.S. 91, upon which petitioner relies (Pet. 8), was decided almost a year before the trial in the instant case. Similarly, the other two cases cited by petitioner (*Matles* v. *United States*, 356 U.S. 256 and *Nowak* v. *United States*, 356 U.S. 660), were decided nine and ten months, respectively, before petitioner's opening brief in the court of appeals.

well established that judgments will not ordinarily be set aside on appeal for errors not brought to the attention of the trial court. See, *e.g., United States* v. *Atkinson*, 297 U.S. 157, 159; *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 239. While petitioner did attack the complaint on other grounds before trial, this principle is equally applicable when an objection does not include the specific ground relied upon on appeal. See 1 Wigmore, *Evidence* (3d ed., 1940), § 18; *e.g., Litton* v. *United States*, 177 F. 2d 416 (C.A. 8). While this Court, of course, has the power to notice errors even though they were not called to the attention of the trial court or court of appeals, this power is exercised only in clear cases and in exceptional circumstances, *Kessler* v. *Strecker*, 307 U.S. 22, 34, where "the errors are obvious, or * * * seriously affect the fairness, integrity or public reputation of judicial proceedings." *United States* v. *Atkinson*, *supra*, 297 U.S. at 160. The error in the instant case—even if, contrary to our contentions below, there is any—is neither obvious nor would it "seriously affect the fairness, integrity or public reputation of judicial proceedings" (see *infra*, pp. 13-14). Moreover, since the government could have amended the affidavit to conform to the complaint, the alleged defect could have been cured if petitioner had raised his objection at the proper time. Petitioner cannot inject a new theory into the case now that it is too late for the government to correct the alleged defect. See *United States* v. *Di Re*, 332 U.S. 581, 588; *Giordenello* v. *United States*, 357 U.S. 480, 487-488.

(*b*). In any event, the government submits that the

holding of the district court, affirmed by the court of appeals, was not erroneous.

The basic aim underlying the requirement of a good-faith affidavit is "to protect those proceeded against from ill-considered action" (*Nowak* v. *United States*, *supra*, 356 U.S. at 662), which might cause damage to reputation and standing in the community. The key purpose, in other words, is to put the defendant on notice in reasonable detail that the government is not initiating such proceeding in reckless disregard of his rights or reputation, but is proceeding only after a careful evaluation of facts which it is willing to put to the test of judicial scrutiny. *United States* v. *Zucca*, *supra*, 351 U.S. at 99-100. It is apparent from its face, and petitioner makes no contrary claim here, that the affidavit in this case meets these purposes. It describes petitioner's Communist Party membership and the concealment and misrepresentation of such membership in adequate detail. In short, as the affidavit stands, it sets forth "evidentiary matters showing good cause for cancellation of citizenship". *Id.* at 99.

Petitioner argues, in effect, that the affidavit limits the scope of the complaint and that a ground not set forth in the affidavit cannot be alleged in the complaint or relied upon by the court in decreeing cancellation of citizenship. We see no basis for such a stringent requirement. First, petitioner's view equates the evidence that must be set forth in the affidavit with that which is required to support the ultimate judgment of denaturalization. Just as that is not the standard for determining probable cause to arrest or search under

the Fourth Amendment (see *Brinegar* v. *United States*, 338 U.S. 160, 175-176), so it should not be the test of the validity of an affidavit in a denaturalization proceeding. To designate the affidavit as the depository of each and every charge which must be proved, would be to render the complaint completely meaningless. Cf. *Schneiderman* v. *United States*, 320 U.S. 118, 159-160, where this Court refused to consider as part of the charge issues set forth in the affidavit of good cause which were outside the scope of the complaint.

Second, the defendant gains no additional protection by requiring that all the grounds asserted in the complaint be included in the affidavit and by barring any different reason from being used as an alternative charge in the complaint. The affidavit gives him protection against irresponsible governmental action instituting a denaturalization suit; the complaint gives him notice of what he must defend against. He is thus fairly protected. We submit that as long as a defendant is secure against the possibility of governmental irresponsibility and excess by the requirement that at least one ground evincing good cause be stated in the affidavit, the statutory mandate is satisfied.

2. Petitioner further contends (Pet. 9-11) that the concealments and misrepresentations of his arrest record were not material since there was no showing that disclosure could have led to a denial of naturalization. The test of materiality is not, however, whether truthful answers would have themselves established a bar to citizenship. Instead, the proper standard is whether the falsification forecloses intelligent inquiry into ob-

jective facts, which, if they had been revealed, might have prevented the acquisition of citizenship.

Petitioner, in order to be naturalized, was required to establish that he had behaved as a person of good moral character during the five years preceding his petition for naturalization.[9] The question asked petitioner concerning his prior arrests was obviously material since they related directly to the issue of good moral character. The naturalization court was entitled to weigh all the evidence necessary to determine good moral character—including the evidence which might have been discovered if, as the district court found here (*supra*, p. 10), the government had not been prevented from making an investigation based on the concealed facts. Thus, the federal courts have repeatedly held that false answers to questions concerning an alien's criminal record, by shutting off further inquiry into the alien's moral character, constitute a fraud upon the naturalization court and are thus valid grounds for denaturalization. See, *e.g.*, *United States* v. *De Lucia*, 256 F. 2d 487, 490 (C.A. 7), certiorari denied, 358 U.S. 836; *United States* v. *Montalbano*, 236 F. 2d 757, 759-760 (C.A. 3), certiorari denied *sub nom. Genovese* v. *United States*, 352 U.S. 952; *Corrado* v. *United States*, 227 F. 2d 780, 782-784 (C.A. 6), certiorari denied, 351 U.S. 925; *Stacher* v. *United States*, 258 F. 2d 112, 123 (C.A. 9), certiorari denied, 358 U.S. 907; *United States* v. *Accardo*, 113 F.

[9] The pertinent requisites in this case are set out in the Nationality Act of 1906, Sec. 4, 34 Stat. 596, as amended, 45 Stat. 1512, under which petitioner was naturalized.

Supp. 783 (D. N.J.), affirmed, 208 F. 2d 632 (C.A. 3), certiorari denied, 347 U.S. 952; *United States* v. *Chandler*, 152 F. Supp. 169, 177, 179 (D.Md.). Even though petitioner's misrepresentation concerned arrests occurring before the statutory period, the arrests related to petitioner's moral character in general and their concealment prevented inquiry directed specifically at his moral character during the statutory period. Accord, *United States* v. *De Lucia, supra; Corrado* v. *United States, supra; Stevens* v. *United States*, 190 F. 2d 880, 881 (C.A. 7). In other words, it is not for the alien to decide, in answering clear and explicit questions asking for particular information, which facts concerning his moral character need not be disclosed because he believes that they are not important enough for the government to investigate.

Petitioner also contends (Pet. 9-10) that he had no duty of disclosure since the arrests were unlawful in the light of later decisions of this Court relating to freedom of speech and of assembly. Even if the argument were valid as to the two arrests for distribution of handbills and public demonstration, it does not reach the third arrest for "general breach of the peace."[10] As the court of appeals stated (270 F. 2d at 183): "[t]he failure to disclose it [the latter arrest] alone would be sufficient to sustain the judgment of the district court. * * * It is the concealment of any material fact sought to be inquired into, including any arrest,

[10]As to this arrest, petitioner merely says (Pet. 10) that he was fined only $25 and that the case was later "nolled." Of course, this does not establish that the *arrest* was illegal.

which is the fraudulent act and which justifies not only the finding of fraud, but also the finding which the district court here made * * *." 270 F. 2d at 183.[11]

3. In addition to the ground just discussed, the finding of the district court as to petitioner's concealment

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[11] Petitioner relies (Pet. 9, 10, 11) on *United States* v. *Anastasio*, 226 F. 2d 912 (C.A. 3), certiorari denied, 351 U.S. 931, and *United States* v. *Kessler*, 213 F. 2d 53 (C.A. 3), to support his contention that "denaturalization may not be based on misrepresentations of arrests the disclosure of which would not have warranted denial of naturalization" (Pet. 11). This reliance is misplaced. In *Anastasio*, unlike the instant case, the government knew of the defendant's arrest record prior to naturalization, and therefore was not deceived. 226 F. 2d at 917-918. In *Kessler*, the defendant testified at her denaturalization trial that she had originally given a negative answer concerning the arrests because the attorney for her union had advised her that the arrests were illegal; that it was her understanding that she had done no wrong; and that she had no intention of lying. The record showed that the trial courts had discharged Kessler after each arrest because the arrest had been made for a non-existent crime. Therefore, the court of appeals held that the defendant's answers were not *wilful* mistatements, and that, in fact, the answers were not misstatements at all, since the question asked did not mean to inquire concerning false or illegal arrests.

The instant case is totally unlike *Kessler* in two vital respects. First, petitioner did not take the stand to testify why he did not disclose his arrests, nor is there anything in the record on which to challenge the finding below that the misrepresentation was knowing and wilful. Second, here the trial courts did not find any of the arrests to be illegal, and, moreover, as we have shown, petitioner does not suggest any illegality even now as to one of the three arrests. And see *United States* v. *Montalbano*, *supra*, 236 F. 2d at 760, and 760, n. 3, a later case also decided by the Third Circuit, which specifically considered the very portion of *Kessler* quoted by petitioner (Pet. 10), said that the decision in *Kessler* was based on the fact that the defendant had not made an untruthful answer since her arrests were illegal, and held that the concealment of legal arrests constitutes a material misrepresentation since it prevents the government from making further inquiry. Since at least one of the arrests here was legal, the decision of the court below is completely consistent with the position of the Third Circuit.

and misrepresentation of his Communist Party membership independently supports the order of denaturalization.

The evidence adduced at the trial established conclusively that, in the proceedings leading up to his naturalization in 1940, petitioner, while under oath, was asked by the preliminary examiner to name all of the organizations to which he belonged and to state whether he believed in Communism, Fascism, or Nazism. The plain import of petitioner's responses listing membership only in a fraternal order and denying belief in any of these three ideologies (see *supra*, pp. 4-5) was denial of Communist Party membership.[12] The unrebutted facts, however, were that prior to and subsequent to his naturalization petitioner was an active and ardent Party member, holding numerous posts in the Party hierarchy (see *supra*, pp. 6-9). In short, it was shown clearly and convincingly that petitioner had intentionally and wilfully misrepresented material

[12] The district court's holding is not inconsistent with the decisions of this Court in *Nowak* v. *United States*, 356 U.S. 660, and *Maisenberg* v. *United States*, 356 U.S. 670. In those cases, the fraud claimed stemmed solely from the defendants' allegedly false answers to question 28 on the preliminary naturalization form—"Are you a believer in anarchy? * * * Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? * * *" The Court found that this question could well be interpreted as requiring disclosure only of membership in anarchistic organizations, and therefore held that it was "too ambiguous" to sustain the fraudulent procurement charge based on membership in the Communist Party. *Nowak*, 356 U.S. at 664-665. In this case, however, petitioner was categorically questioned by the preliminary examiner, during oral interview, as to his organizational memberships generally, and specifically as to his possible Communistic beliefs.

facts as to conduct which provides a basis for revocation of citizenship. See *Sweet* v. *United States*, 211 F. 2d 118, 120 (C.A. 6), certiorari denied, 348 U.S. 817.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

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